

Supreme Court, U.S.

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IN THE  
**Supreme Court of the United States**

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OFFICIAL REPRESENTATIVES OF THE BONDHOLDERS AND  
TRADE CREDITORS OF DEBTORS OWENS CORNING, *ET AL.*,  
*Petitioners,*

v.

CREDIT SUISSE FIRST BOSTON, AS AGENT, *ET AL.*,  
*Respondents.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Third Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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January 26, 2006

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### **QUESTION PRESENTED**

Whether the Third Circuit improperly adopted a standard for employing the long-standing equitable bankruptcy remedy of substantive consolidation that differs materially from the analysis used by other courts of appeals and that effectively precludes the use of this remedy over the objection of any creditor, even where, as here, there is overwhelming evidence of substantial identity among the entities to be consolidated and there are enormous benefits to be obtained from using substantive consolidation.

### **PARTIES TO THE PROCEEDING**

Pursuant to Supreme Court Rule 14.1, the following is the list of parties to the proceeding:

1. John Hancock Life Insurance Company and Wilmington Trust Company, as the Official Representatives of the Bondholders and Trade Creditors of Debtors Owens Corning

2. Owens Corning, a Delaware Corporation; CDC Corp.; Engineered Yarns American Inc.; Exterior Systems Inc.; Falcon Foam Corp.; Fibreboard Corp.; HomeExperts; Integrex; Integrex Professional Services; Integrex Testing Systems; Integrex Supply Chain Solutions LLC; Integrex Ventures LLC; Jefferson Holdings Inc.; Owens-Corning Fiberglass Technology Inc.; Owens-Corning HT, Inc.; Owens-Corning Overseas Holdings, Inc.; Owens-Corning Remodeling Systems, LLC; and Soltech, Inc.

3. Official Committee of Asbestos Claimants

4. James J. McMonagle, the Legal Representative for Future Asbestos Claimants of Owens Corning

5. Credit Suisse (f/k/a Credit Suisse First Boston), as agent for a syndicate of banks and other institutions that are commercial creditors of Owens Corning, including Bear Stearns & Co. Inc., Loews Corporation, Societe General, Bank of America Corp., JP Morgan Chase & Co., UBS AG and Credit Agricole S.A.

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, Special Counsel to the Official Committee of Unsecured Creditors (the "Creditors Committee") makes the following disclosure:

Special Counsel to the Creditors Committee represents the interests of all bondholders and trade creditors of Owens Corning, Inc. The two bondholder members of the Creditors Committee are: (i) John Hancock Life Insurance Company, whose corporate parent is Manulife Financial Corporation; and (ii) Wilmington Trust Company as Indenture Trustee, whose corporate parent is Wilmington Trust Corporation. The other Owens Corning trade creditors and bondholders are not parties to this proceeding, and it is not possible to ascertain with certainty who many of them are, although it is likely that at least some of them are publicly held companies.

Petitioners currently are not aware of any publicly held company that holds 10% or more of the stock of Manulife Financial Corporation, which is the parent of John Hancock Life Insurance Company, or Wilmington Trust Corporation, which is the parent of Wilmington Trust Company.

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Petitioners, the Official Representatives (the "Official Representatives") of the Bondholder and Trade Creditor constituencies of Owens Corning, Inc. ("Owens Corning" or "OCD") and 17 of its wholly owned subsidiaries (collectively, the "Debtors"), by their undersigned counsel, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit (Ambro, J., joined by Roth & Fuentes, JJ.) in this case.

### **PRELIMINARY STATEMENT**

This case involves a recurring, vitally important issue of bankruptcy law on which, as the Third Circuit expressly acknowledged, it "*disagree[s]*" with the law of other circuits. Pet. App. 19a (emphasis added). As in prior cases where the lower courts had "adopted . . . different" and conflicting "standards" on a significant question of bankruptcy law,<sup>1</sup> the Court should grant certiorari to clarify the significant issue presented by this case.

The issue on which the circuit courts disagree – indeed, on which they are in disarray – involves whether and in what circumstances bankruptcy courts may employ the equitable remedy of substantive consolidation. Large Chapter 11 corporate bankruptcy cases nearly always involve multiple affiliated corporations and typically provide for the substantive consolidation of some or all of the affiliated debtors and non-debtors in a plan of reorganization. Substantive consolidation recognizes that affiliated corporate enterprises are sometimes operated without regard for corporate separateness, and permits a bankruptcy court to ignore corporate distinctions among related entities, combine the assets and liabilities of those entities, and treat them as if they were a single entity. The consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied, the merged companies' intercompany claims are extinguished, and the creditors of the consolidated entities may be combined for purposes of voting on plans of reorganization.

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<sup>1</sup> *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 959 (1997); see also *infra* p. 27 (collecting additional authorities).